



Employment Visa Types: Know your Options

Description of session

10:30 am

Introductions

10:45 am

Overview of employment visa categories

11:15 am

Discussion on institutional processes & policies

11:30 am

Break-out sessions

Review hiring scenarios and discuss visa options

11:45 am

Q & A



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• **Common visas for teaching & research**

- J-1 Exchange Visitor
- H-1B Temporary Worker in a Specialty Occupation
- E-3 Treaty Professional Visas for Australian Citizens
- TN NAFTA Work Visa for Canadian and Mexican Citizens
- O-1 Employees of Extraordinary Ability
- Other: EAD, L-1

J-1 Exchange Visitor Program



Est 1961 by the Hayes-Fulbright Act
Fosters international intellectual exchange

J-1 Exchange Visitors

- Shorter processing time(as compared to H-1B)
- Moderate documentation
- Considerations:
 - Two year home residency requirement, aka 212(e): Employee may be required to return to their home country for 2 years after completing their program
 - 12/24 month bar
- 20 exchange visitor categories of in the SEVIS system, Higher ed typically uses about 6 of these categories



Legal framework for participant categories

- I.N.A. §101(a)(15)(J) defines an exchange visitor as:
- An alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description...

Categories of the J-1

- Professor
- Research Scholar
- Specialist
- Short-term Scholar
- Alien Physician
- Student Intern
- Student categories (secondary, associate, bachelors, masters, doctorate, non-degree, intern)
- Other (teacher, au pair, camp counselor, government visitor)



J-1 Limits of Stay

Research Scholar/Professor categories

5 years

Short-term Scholar category

6 months

Specialist

12 months

Student Intern

12 months

J-1 vs. B-1/B-2 or VWP

J-1

- Brief visits or stays up to five years
- Teaching, research, observation and consultation
- Allows employment

B-1/B-2/VWP

- Brief visits only
- Meetings, conferences, and consultation
- Prohibits research that benefits host institution
- Prohibits employment (certain honoraria and reimbursement payments allowed)

J-2 with EAD card

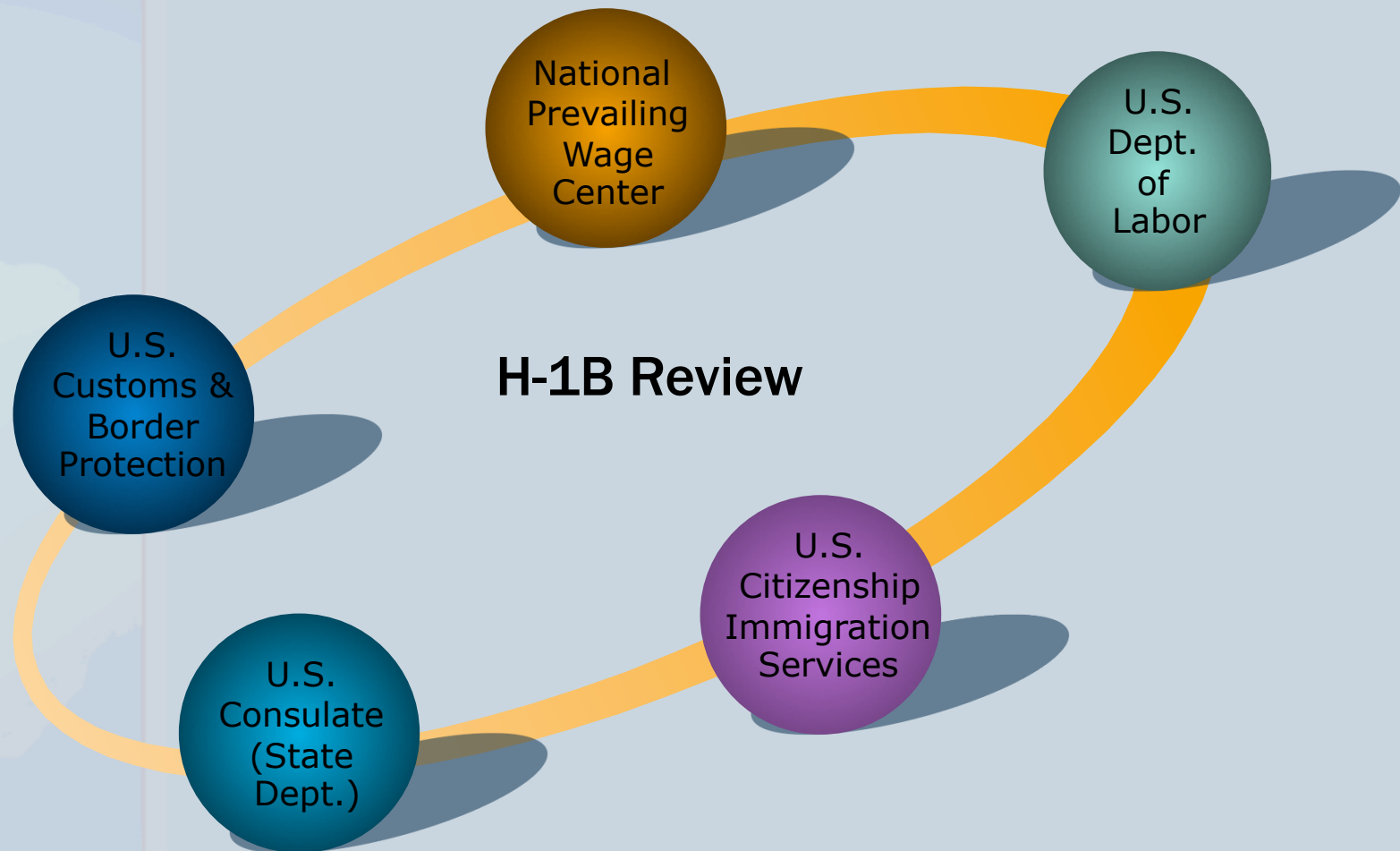
- Dependents of J-1s with work authorization
- Employee self-petitions (form I-765) to USCIS for EAD card
- EAD card is typically valid for 1 year

H-1B Specialty Occupation

- Only status appropriate for Tenure-Track employees
- For “specialty occupations” requires a minimum of a bachelor’s degree in the discipline
- Hiring department must comply with all Department of Labor “labor conditions,” including minimum salary requirements
- 6 years of eligibility* (may only apply in 3 year increments)
- Higher Ed institutions are not subject to H-1B cap
- Time spent working for any employer counts toward 6 year limit
- Long processing times
- Heavy documentation

* Extensions beyond 6 years possible in some circumstances involving delays in processing of permanent residence applications

U.S. government agencies involved in H-1B



J-1 vs. H-1B

J-1

- For visiting faculty, visiting scholars, interns and postdocs
- Funds can come from US university, int'l institution, or from personal account
- No tenure or tenure-track or "permanent" jobs
- Dependents may apply for work authorization

H-1B

- Used for tenure-track faculty and some postdocs
- Must be paid by university
- Positions may be "permanent"
- Dependents cannot work

J-1 vs. H-1B (continued)

J-1

- Minimum funding set by university
- USCIS not involved
- 5-year limit
- 24-month bar on repeat participation

H-1B

- Prevailing wage set by DOL
- Requires approval from USCIS
- 6-year limit
- 12 months outside U.S. restarts the 6-year clock

TN Canadian or Mexican Citizens

- NAFTA treaty specified a list of 63 professional positions with degree requirements, refer to Resource 8n in NAFSA manual
- Academic positions included on list: Teachers, research assistants, scientists, etc.
- Available in three year increments, no restriction on the number of renewals (note: stay must be temporary in nature)
- Can obtain TN status by travel or petition:
 - Canadian citizens apply at border; Mexican citizens obtain TN visa first
 - Both may change status inside US via employer petition to USCIS

E-3 Australian Professionals

- Requires a minimum of a bachelor's degree in the discipline associated with the position
- Not for tenure track positions
- Hiring department must comply with all Department of Labor "labor conditions", including minimum salary requirements
- Can apply inside US (via petition to USCIS) OR outside US (via US Consulate)
- Initial 2 year admission to US, can apply for 2 year extension, no limit to extensions
- Spouse can apply for Employment Authorization Document (EAD) from USCIS

O-1 Employees of Extraordinary Ability

- Employee must have extraordinary ability in the sciences, arts, education, business, or athletics, as demonstrated by sustained national or international acclaim
- Substantial documentation to prove “extraordinary ability”
- Initial period of stay up to 3 years with one year extensions thereafter; no limit to extensions
- Can apply for O-1 status if subject to 212(e)
- Cannot apply for change of status from J to O within US

L-1 Intracompany Transferees

- Transfer to US company parent / subsidiary / affiliate / brand
- 1 year continuous employment abroad in same capacity within the last 3 years

L-1A Managers/Executives

L-1B Specialized Knowledge

PR with pending EAD

- Employees who have filed I-485 (adjustment of status) petition to USCIS can apply for employment authorization, along with their dependents
- Employee files form I-765 to USCIS for EAD card
- Valid while petition is pending, up to one year at a time
- EAD may void H-1B

Institutional Processes and Policies

How do processes and policies shape the determination of visa category and international hiring on your campus?

Who are the policy makers at your institution?

Committees?

Office of Human Resources?

Include top administrators, i.e., Deans, Vice Provosts, President?

What types of positions do you sponsor for J-1?

OSU

- Visiting Scholars
- Visiting Scientists
- Visiting Faculty
- Postdocs
- Student interns
- Instructors

PSU

- Visiting Scholars
- Visiting Faculty
- Instructors
- Research Assistants / Associates
- Postdocs

UW

- Visiting Scholars
- Visiting Scientists
- Visiting Faculty
- Postdocs
- Student interns

What types of positions do you sponsor for H-1B?

OSU

- Professors & Instructors
- Postdocs, Scholar or Research Associate
- Research Assistants
- Vet Med Clinical Fellows
- Careful consideration of Professional Faculty, Classified Staff and Coaching positions

PSU

- Professors
- Research Asst
- Research Associates
- Instructors
- Professional positions (i.e. Accountant, IT Manager, etc)

UW

- Lecturers/Instructors
- Professors
- Postdocs, under some circumstances
- Residents, under some circumstances
- No Professional or Classified Staff or part-time positions



Break-out sessions

Scenario 1

An undergraduate student from France wants to work with a professor in a Microbiology lab on your campus from May through August. The professor wants to pay the student. Discuss what visa options might exist and pros & cons of each.

Scenario 2

An Oceanography department at your school wants to hire an underwater welder for an project they are working on for a period of 7 - 11 months. Discuss what visa options might exist and pros & cons of each.

Scenario 3

The Chemistry department wants to hire a tenure track assistant professor. The selected candidate has not completed her dissertation yet, but expects to have a degree in hand by the beginning of the academic year. Discuss what visa options might exist and pros & cons of each.

QUESTIONS

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